

MS Appeal Brief Patents

PATENT
4507-1011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Kent Aaron NIXON

Conf. 9590

Application No. 10/568,879

Group 3632

Filed: July 21, 2006

Examiner K. Wood

DRINK CONTAINER HOLDING APPARATUS

APPEAL BRIEF

MAY IT PLEASE YOUR HONORS:

This is an appeal of the final rejection of
claims 57-70 by the Official Action mailed March 14, 2011.

(i) Real Party in Interest

The real party in interest in this appeal is the assignee, Liquid Group Limited of Auckland, New Zealand.

(ii) Related Appeals and Interferences

None.

(iii) Status of Claims

Claims 1-56 were cancelled. Claims 57-74 are pending. Claims 71-74 are withdrawn. Claims 57-70 were rejected by the Official Action mailed March 14, 2011 (the "Official Action"). The final rejection of claims 57-70 is being appealed.

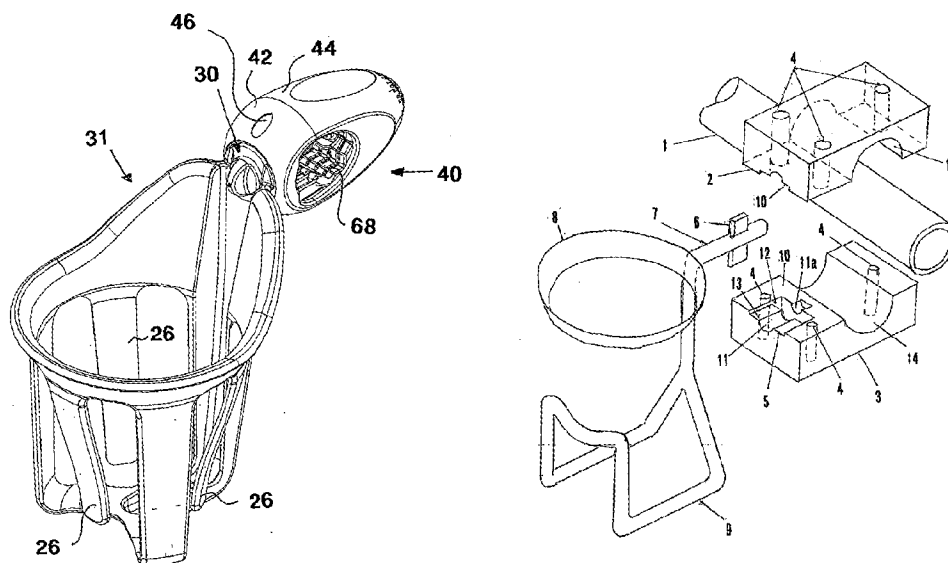
(iv) Status of Amendments

No amendment has been filed subsequent to the Official Action finally rejecting claims 57-70.

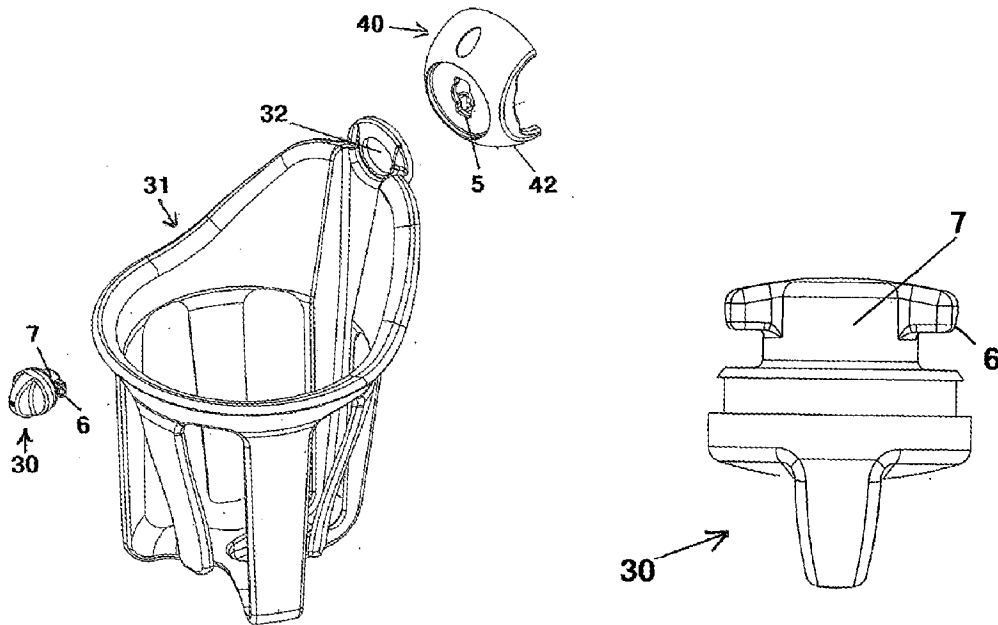
(v) Summary of Claimed Subject Matter

The invention is a free-swinging drink container holder apparatus, which allows a held drink container to move independently (swing freely) of the object to which the drink container holder apparatus is mounted.

As recited in independent claim 57, the invention is a drink container holding apparatus comprising an object attachment device (bracket 40 comprised of parts 42, 44 in the elected species of Figures 3-7; 2, 3 in the embodiment of Figures 1-2, specification page 9, lines 21-22) adapted for attachment to an object (such as prams, buggies, wheelchairs, bicycles, golf trundlers and similar objects, element 1, Figure 1, specification page 1, lines 5-8).



The object attachment device includes a holder engagement portion (entry slot 5 and the surrounding region, Figure 4, specification page 9, lines 4-8).



The inventive apparatus further comprises a drink container holder (31, 8, 9, Figures 1-4, specification page 7, lines 16-26; page 8, line 33). The drink container holder is to hold a variety of different liquid receptacles. The drink container holder includes an attachment device engagement portion (e.g., pin/dowel 30 comprised of projection and shaft elements 6, 7 of Figures 3-7; 6,7 in Figure 1, specification page 8, lines 31-35) to engage with the holder engagement portion.

As per claim 57, the holder engagement portion (entry slot 5) and the attachment device engagement portion (30, 6, 7), when engaged, allow free relative angular movement between the object attachment device and the drink container holder in a selected plane, and the drink container holder and the object attachment device are engaged or disengaged by orientating the holder engagement portion and the attachment device engagement portion in a pre-determined relative angular disposition in the selected plane and moving the attachment device engagement portion and holder engagement portion relative to each other in a direction perpendicular to the selected plane to effect the engagement or disengagement.

The drink container holder 31 and the object attachment device 40 are engaged by the shaft 7 of the attachment device engagement portion 30, with the projections 6 aligned corresponding to opening of the entry slot 5, passing into the object attachment device 40 and rotating the attachment device 30 so that the projections 6 of the attachment device engagement portion 30 engage in the holder engagement portion (entry slot 5). This process can be reversed to disengage the object attachment device from the drink container holder.

(vi) Ground of Rejection to be Reviewed on Appeal

A ground of rejection presented for review on appeal is whether claims 57-70 were properly rejected as unpatentable under §103 as obvious over Leasure 6,679,465 in view of Kurtz 5,996,957.

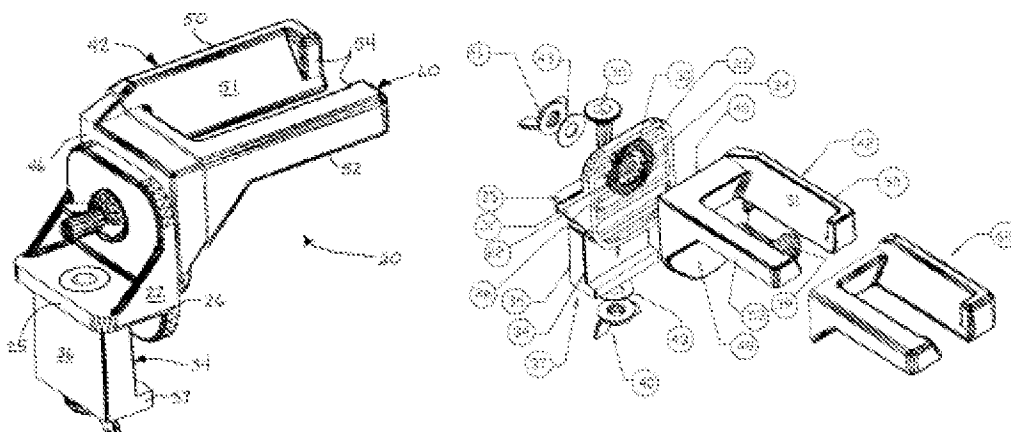
(vii) Arguments

Arguments Concerning the First Ground of Rejection

Claims 57-70 were improperly rejected as they are non-obvious over Leasure 6,679,465 in view of Kurtz 5,996,957. The claims stand together.

Claim 57

The Examiner asserts that Leasure discloses all of the limitations of the claimed invention except for the "drink holder 42" being a ring and a frame.



This is factually and legally incorrect.

Element 42 is not a drink container holder. Element 42 is a bow rest. Further, Leasure is not a drink container holding apparatus.

In actually analyzing the claims, the Examiner fails to properly interpret the claim's terms. More specifically,

the Examiner gives the claim terms a meaning inconsistent within the specification.

MPEP §2111 provides guidance in giving the pending claims their broadest reasonable interpretation consistent with the specification; however, MPEP § 2111 does not authorize that the claim terms can take on any conceivable meaning the Examiner may create. The Examiner is limited such that the broadest reasonable interpretation of the claims is consistent with the interpretation that those skilled in the art would reach. It is not consistent with the specification to consider the bow rest 42 as being a drink container holder, or to consider the Leasure device a drink container holding apparatus.

Further, Leasure is nonanalogous art to the claimed invention. Leasure solves the specific problem of holding a hunting bow in a rigid orientation relative to a non-moving structure. Leasure solves this by providing a mount that rigidly holds the bow in the mount. The mount is then rigidly attached to an item (usually part of a hunting hide). The result is to support the bow's weight so a hunter's (user) arm does not tire while waiting for prey to come within the shooting range of the bow and arrow.

Therefore, a person seeking to make the claimed free-swinging drink container holding apparatus, allowing a

drink container to move independently (allow free relative angular movement between the object attachment device and the drink container holder) to the object to which the holder apparatus is mounted, would not look to the solutions for rigidly supporting a hunting bow disclosed by Leasure.

Still further, the solution in Leasure is for mounting to a stationary item when Leasure is in use. Any movement, particularly that of free-swinging and uncontrolled movement as in the present invention, would detract from the purpose of Leasure. Such movement would startle or warn potential prey (see column 1 lines 13-17). A person seeking to solve the problem of a mount to a moving item would not look to rigid mounts for bows. Indeed, the modification to Leasure suggested by the Examiner would render Leasure unsuitable for Leasure's intended use.

The Examiner states that Kurtz teaches that it is well known to have a drink holder having a ring (26) and a frame (24 and 18); that it would have been obvious to have modified Leasure to have included the ring and frame as taught by Kurtz for the purpose of allowing the device to support various types of objects including bows and cylindrical objects including drinks; and that the modified version of Leasure in view of Kurtz would allow for the object holder of Leasure to be removed by removing the bolt (39 of Leasure) and

then replacing it with a similar object holder which includes a ring and frame (as taught by Kurtz) but includes the plate member 48 including the ratchet faces (as taught by Leasure).

Appellant disagrees. There is a clear and non-obvious difference between the disclosures of Leasure and Kurtz and the claimed invention.

Leasure discloses a rigid holder for an object, in Leasure's case the bow of a bow and arrow for hunting, whereas the claimed invention clearly requires allowing free relative angular movement between the object attachment device and the drink container holder.

This "free relative angular movement" is not present in either of Kurtz or Leasure, even when combined. And as noted above, such free relative angular movement would render Leasure unsuitable for Leasure's intended use.

Further, neither reference, even when combined, teaches or suggests the "drink container holding" solution of the present invention. First, Leasure seeks to hold rigidly an object and does not allow for any relative movement of the object holder to that which the object holder is pivoted on. Any free movement in the holder of Leasure is undesirable as it would startle or warn prey. Kurtz also fails to disclose free relative movement of the drink holder to that which it is pivoted or attached to.

It would therefore be non-obvious for a person skilled in the art to add free angular relative movement to Leasure, where such movement is between the object attachment device and a drink container holder and in a selected plane.

Leasure clearly spells out its intended use to hold a bow in a desired posture with no free movement of the bow once the desired posture is selected. The solution to the rigid holding intent is clearly shown in the detailed disclosure about ratchet faces (integer 24) between the base plate (22) and the mating face to the ratchet face 46. These allow adjustment to the desired posture on which the mount of Leasure is then locked into position. Therefore, even when a bow is placed in the holder of Leasure, there would not be any free relative angular movement.

In complete contrast to the "free relative angular movement" of the present invention, the sole reason for the existence of Leasure is to hold a bow in a steady and locked arrangement, i.e., preventing any free angular movement.

Similarly, Kurtz has a serrated contact (42) allowing the drink holder to be set to certain specific angles. Thus, there would also be no free movement in Kurtz.

Therefore, the rejection includes factual and legal error, and is therefore improper.

Conclusion

The Appellant has shown that the Examiner has failed to demonstrate that the rejected claims are *prima facie* obvious. Thus, favorable reconsideration and reversal of the Examiner's rejection, by the Honorable Board of Patent Appeals and Interferences, are respectfully solicited.

Please charge the requisite Appeal Brief fee in the amount of \$540 to our credit card.

Respectfully submitted,

YOUNG & THOMPSON

By ____/Roland E. Long, Jr./_____
Attorney for Appellant
209 Madison Street
Suite 500
Alexandria, VA 22314
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

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(viii) Claims Appendix

57. A drink container holding apparatus, comprising:
an object attachment device adapted for attachment
to an object and including a holder engagement portion; and

a drink container holder including an attachment
device engagement portion to engage with the holder engagement
portion,

wherein the holder engagement portion and the
attachment device engagement portion, when engaged, allow free
relative angular movement between the object attachment device
and the drink container holder in a selected plane, and

wherein the drink container holder and the object
attachment device are engaged or disengaged by orientating the
holder engagement portion and the attachment device engagement
portion in a pre-determined relative angular disposition in
the selected plane and moving the attachment device engagement
portion and holder engagement portion relative to each other
in a direction perpendicular to the selected plane to effect
the engagement or disengagement.

58. A drink container holding apparatus according
to claim 57, wherein the drink container holder rotates

relative to the object attachment device without rotating the attachment device engagement portion.

59. A drink container holding apparatus according to claim 57, wherein the drink container holder is rotatable through 360° in the selected plane relative to the object attachment device without the pre-determined relative angular disposition of the holder engagement portion and the attachment device engagement portion occurring.

60. A drink container holding apparatus according to claim 57, wherein the attachment device engagement portion is separable from the drink container holder.

61. A drink container holding apparatus according to claim 57, wherein the holder engagement portion includes a receptacle having an entry slot and the attachment device engagement portion includes a projection adapted to pass through the entry slot.

62. A drink container holding apparatus according to claim 61, wherein the object attachment device comprises a bracket provided in at least two parts and wherein the at least two parts of the bracket are fastened to each other

about a part of the object to which the apparatus is attached in use.

63. A drink container holding apparatus according to claim 62, wherein each said part of the bracket includes a fastening recess adapted to be provided about the part of the object in use.

64. A drink container holding apparatus according to claim 62, wherein the object attachment device further includes fastening means for fastening the parts of the bracket together.

65. A drink container holding apparatus according to claim 61, wherein the projection is provided on a shaft that can pass through the entry slot.

66. A drink container holding apparatus according to claim 65, wherein the receptacle includes support means for receiving and supporting a part of the shaft.

67. A drink container holding apparatus according to claim 65, wherein the projection includes two projecting

portions, one portion projecting from either side of the shaft and the projections being substantially opposed.

68. A drink container holding apparatus according to claim 61, wherein the entry slot is oriented so that it is at an angle of substantially 45 degrees to 90 degrees to the orientation of the projection when the attachment device engagement portion is engaged to the holder engagement portion to retain the drink container holder in use to the object attachment device.

69. A drink container holding apparatus according to claim 57, wherein the drink container holder includes a ring for receiving a drink container.

70. A drink container holding apparatus according to claim 57, wherein the drink container holder includes a frame to carry or hold a drink container.

(ix) Evidence Appendix

None.

(x) Related Proceedings Appendix

None.